

**FRANCE WILLIAMS**  
Claimant

**IFR SYSTEMS, INC.**  
Respondent

**ST. PAUL FIRE & MARINE**  
Insurance Carrier

**GRANITE STATE INSURANCE CO.**  
Insurance Carrier

# KANSAS WORKERS COMPENSATION FUND

The claimant appeared in person and by her attorney, Robert R. Lee of Wichita, Kansas. The respondent and insurance company, St. Paul Fire & Marine Insurance, appeared by and through their attorney, Vince A. Burnett of Wichita, Kansas. The respondent and insurance company, Granite State Insurance Co., appeared by and through their attorney, Kim R. Martens of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Steven L. Foulston of Wichita, Kansas. There were no other appearances.

**RECORD**

The record before the Appeals Board consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of Preliminary Hearing held before Administrative Law Judge John D. Clark on May 10, 1994, and exhibits attached thereto.

**ISSUES**

- (1) Whether claimant's injury arose out of and in the course of her employment with IFR Systems, Inc.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

Claimant met with personal injury by accident arising out of and in the course of her employment with the respondent from a series of injuries from August of 1993 through October 14, 1993.

The claimant was employed by IFR, Inc. as a quality control person, which required use of her upper extremities.

The claimant underwent elbow surgery in March of 1993 and returned to her job as a quality control person for respondent. The claimant testified that use of her hands at work caused her condition to worsen.

The claimant was treated by Dr. Mark Melhorn subsequent to this injury as well as for her prior work-related conditions. Dr. Melhorn indicates that he does not believe that her current symptoms are a natural and probable consequence of her previous injuries and feels that her current problems are a result of a combination of her previous treatment, a component of her motor vehicle accident, and of work activities performed since March of 1993.

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556 (1984).

The burden of proof is on the claimant to establish her right to an award for compensation by proving all of the various conditions on which her right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to weigh the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

The medical report from Dr. Melhorn, while not abundantly clear, does show that her condition arose out of and in the course of her employment. Respondent supplies no evidence to convince the Appeals Board of a lack of a connection between the work and the claimant's alleged aggravation of her pre-existing condition. The testimony of Dr. Melhorn is credible and uncontradicted.

Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The medical evidence of Dr. Melhorn, combined with the testimony of the claimant, is sufficient to convince the Appeals Board that, for preliminary hearing purposes, claimant did suffer an aggravation of pre-existing injury arising out of and in the course of her employment and as such, she is entitled to medical care for said injury.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark entered on May 10, 1994, shall be, and hereby is, affirmed in all respects and shall remain in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 1995.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Kim R. Martens, Wichita, KS  
Steven L. Foulston, Wichita, KS  
John D. Clark, Administrative Law Judge  
George Gomez, Director